

## **REMARKS**

### **Summary of the Office Action**

The abstract stands objected to because its length exceeds 150 words.

Claim 11 stands objected to under 37 C.F.R. § 1.75(d)(1).

Claim 11 stands objected to under 37 C.F.R. § 1.75(a).

Claims 11 and 12 stand rejected under 35 U.S.C. § 101 as allegedly being directed to non-statutory subject matter.

Claims 1-10 are allowed.

Claims 11 and 12 would be allowable if rewritten or amended to overcome the rejections under 35 U.S.C. § 101.

### **Summary of the Response to the Office Action**

Applicant has amended claims 2, 11 and 12 in order to differently describe embodiments of the disclosure of the instant application and/or to improve the form of the claims. Applicant has amended the abstract and the specification in response to objections in the Office Action. Accordingly, claims 1-12 currently remain pending.

### **Objection to the Abstract**

The abstract stands objected to because its length exceeds 150 words. Applicant has amended the abstract in response to the objection in the Office Action. Accordingly, withdrawal of the objection to the abstract is respectfully requested.

**Claim Objections**

Claim 11 stands objected to under 37 C.F.R. § 1.75(d)(1). The Examiner asserts that while “[c]laim 11 recites ‘One or more readable storage devices’ and ‘one or more processors,’ the specification allegedly “only discloses ‘any conventional computer having a processor and memory (paragraph [0025]).” As a result, the Examiner asserts that “the specification fails to provide support for a plurality of storage devices coupled to a plurality of processors.” Such assertions are respectfully traversed for at least the following reasons.

The portion of the specification in paragraph [0025] this is cited by the Examiner in this regard refers to an arrangement shown in Fig. 1 of the instant application. As explained in paragraph [0023] of the specification, however, Fig. 1 shows “an example of the apparatus used to implement the present invention.” As a result, the entire specification is not limited to this particular example. In addition, paragraph [0037], for example, of the specification provides sufficient enabling support to one having ordinary skill in the subject art for a teaching that one or more processor readable storage devices, such as a disk or other storage device, can be coupled to a plurality of processors.

Nevertheless, the Examiner provides a helpful suggestion at page 2, section 4 of the Office Action of, because claim 11 is an original claim, adding the original subject matter described in the preamble of claim 11 to the specification. Accordingly, Applicant has opted to proceed with the Examiner’s suggestion in this regard by amending paragraph [0037] of the specification to include the features described in the preamble of original claim 11 of the instant application. Accordingly, withdrawal of the objection to claim 11 in this regard is respectfully requested.

Claim 11 also stands objected to under 37 C.F.R. § 1.75(a). Applicant has opted to proceed with the Examiner's helpful suggestion, as provided at page 3, section 6 of the Office Action, of amending the preamble of claim 11 to include similar features as in the preamble of claim 1 of the instant application. Accordingly, withdrawal of the objection to claim 11 in this regard is respectfully requested.

### **Rejections under 35 U.S.C. § 101**

Claims 11 and 12 stand rejected under 35 U.S.C. § 101 as allegedly being directed to non-statutory subject matter. These rejections are respectfully traversed for at least the following reasons.

The Office Action refers to portions of the USPTO's "Interim Guidelines for Examination of Patent Applications for Patent Subject Matter Eligibility" as published in the Official Gazette dated November 22, 2005 (hereinafter "Interim Guidelines"). The Examiner quoted portions of Annex IV of the Interim Guidelines, of which section (c) is directed to "Electro-Magnetic Signals," in support of the Examiner's assertions of such claims being non-statutory.

However, in the second to the last paragraph of this section of Annex IV of the Interim Guidelines, the USPTO goes on to direct that "from a technological standpoint, a signal encoded with functional descriptive material is similar to a computer-readable memory encoded with functional descriptive material, in that they both create a functional interrelationship with a computer. In other words, a computer is able to execute the encoded functions, regardless of whether the format is a disk or a signal." Applicant respectfully submits that such specific directives by the USPTO clearly are in support of the patentability of such "signal" claims. This

portion was not referred to by the Examiner in his quotations of the Interim Guidelines at pages 3-4 of the Office Action. To the extent that such assertions might be maintained, the Examiner is requested to explain the above-quoted portion of the second to last paragraph of Annex IV of the Interim Guidelines and how such USPTO directives can be consistent with an assertion that carrier signal claims are non-statutory if “a signal encoded with functional descriptive material is similar to a computer-readable memory encoded with functional descriptive material,” as specifically conceded to by the USPTO in this portion of the Interim Guidelines.

Nevertheless, Applicant respectfully submits that the combinations of claims 11 and 12 do not even specifically describe a “carrier wave” as asserted by the Office Action. However, it appears that the Office Action might be asserting that because such an embodiment is disclosed in the specification, the claim might be interpreted to describe such an arrangement.

As a result, Applicant has opted to proceed along the lines of the Examiner’s helpful suggestion in the final paragraph of page 4 of the Office Action by amending each of independent claims 11 and 12 to recite only the disclosed “tangible” computer readable media as suggested by the Examiner. As a result, each of these claims now excludes the “intangible media such as signals, carrier waves, etc.” in light of the Examiner’s directives in this regard. In addition, this “tangible” feature has further been incorporated into each of independent claims 11 and 12 by specifying that the claimed “storage devices” (claim 11) and “computer useable medium” (claim 12) “can be loaded in a drive of a workstation” as described, for example, in paragraph [0037] of the instant application’s specification.

Finally, additional changes have been implemented to independent claim 12 to describe a “computer program product” in conformity with the directives of well-established case law such as In re Beauregard, 53 F.3d 1583 (Fed. Cir. 1995).

Accordingly, for at least these reasons, Applicant respectfully requests that the rejections under 35 U.S.C. § 101 be withdrawn.

### **Information Disclosure Statement Issues**

Applicant filed an electronic Information Disclosure Statement in this application on February 14, 2005. The Examiner has not yet acknowledged receipt or indicated to Applicant that the Examiner has considered the information submitted on February 14, 2005 in this regard. Accordingly, the Examiner is requested to address this issue in the next Office Communication.

### **CONCLUSION**

In view of the foregoing, Applicant submits that the pending claims currently under consideration are in condition for allowance, and respectfully request reconsideration and timely allowance of these claims. Should the Examiner feel that there are any issues outstanding after consideration of this response, the Examiner is invited to contact Applicant's undersigned representative to expedite prosecution. A favorable action is awaited.

**EXCEPT** for issue fees payable under 37 C.F.R. § 1.18, the Commissioner is hereby authorized by this paper to charge any additional fees during the entire pendency of this application including fees due under 37 C.F.R. § 1.16 and 1.17 which may be required, including

any required extension of time fees, or credit any overpayment to Deposit Account No. 50-0573.

This paragraph is intended to be a **CONSTRUCTIVE PETITION FOR EXTENSION OF TIME** in accordance with 37 C.F.R. § 1.136(a)(3).

Respectfully submitted,

**DRINKER BIDDLE & REATH LLP**

Dated: September 4, 2007

By:

A handwritten signature in black ink, appearing to read "Paul A. Fournier", written over a horizontal line.

Paul A. Fournier

Reg. No. 41,023

**Customer No. 055694**

**DRINKER BIDDLE & REATH LLP**

1500 K Street, N.W., Suite 1100

Washington, DC 20005-1209

Tel.: (202) 842-8800

Fax: (202) 842-8465